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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* GREGORY MAURICE PLOW and  
FARROKH E. POURMIRZAIE

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Appeal 2008-2129  
Application 09/922,182  
Technology Center 3600

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Decided: January 6, 2009

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Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and BIBHU  
R. MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 of the final rejection of claims 1-4, 6-11, and 13-19. Claims 5, 12, and 20-22 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

## SUMMARY OF THE DECISION

We AFFIRM-IN-PART.

## THE INVENTION

The Appellants' claimed invention is directed to Internet based advertisements. Tagged advertisements are saved at the user's computer. A button is displayed which when toggled then allows saved advertisements to be displayed. (Specification, 2:11-16). Claim 1, reproduced below, is representative of the subject matter of appeal.

1. A method for storing Internet advertisements at a user computer, comprising the acts of:
  - receiving plural Internet advertisements at the user computer automatically without the user requesting them;
  - saving at least plural advertisements at the user computer;
  - allowing a user to access saved advertisements in an advertising history window displaying Internet content composed of plural advertisements;
  - allowing a user to filter previously displayed advertisements, so that only advertisements corresponding to one or more user selected attributes are eligible for display;
  - wherein the saved advertisements include at least one link to a website and the method further comprises:
    - recalling a user-selected saved advertisement, the saved advertisement having at least one link to a website; and
    - assembling the website from the saved advertisement when the link is toggled.

## THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

The following rejections are before us for review:

1. Claims 1-4, 6-11, and 13-19 are rejected under 35 U.S.C. § 102(b) as anticipated by LeMole.

### THE ISSUE

The issue is whether the Appellants have shown that the Examiner erred in rejecting the claims 1-4, 6-11, and 13-19 under 35 U.S.C. § 102(b) as being anticipated by LeMole.

The issue, with regards to claims 1-4, 6-11, and 13-19, turns on whether LeMole discloses an advertising history window displaying Internet content composed of plural advertisement and allowing a user to filter previously displayed advertisements.

The issue, with regards to claims 7-11, turns on whether LeMole discloses that the server transmits the Internet advertisements to the user's computer while the user is engaged in activity other than requesting the advertisements.

### FINDINGS OF FACT

We find the following enumerated findings of fact (FF) are supported at least by a preponderance of the evidence<sup>1</sup>:

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<sup>1</sup> See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

FF1. LeMole does not disclose an advertising history window displaying Internet content composed of plural advertisements. LeMole discloses only a composite advertising page at Col. 5:23-27.

FF2. LeMole does not disclose that the computer user filters previously displayed advertisements.

FF3. LeMole does disclose that the system pushes the information over the Internet to the user where it is cached for later retrieval (Col. 6:36-45).

FF4. As LeMole's system pushes and transmits the advertisements to the user's computer over the Internet, the user may be engaged in activity other than requesting the advertisements.

#### PRINCIPLES OF LAW

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, (Fed. Cir. 1987). Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 102 begins with a determination of the scope of the claim. We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The properly interpreted claim must then be compared with the prior art.

## ANALYSIS

The Appellants argue that the rejection of claim 1 under 35 U.S.C. § 102(b) as being anticipated by LeMole is improper because the reference fails to teach the limitation of “an advertising history window displaying Internet content composed of plural advertisements” (Br. 4-5). The Appellants also argue that LeMole fails to disclose the limitation for “allowing a user to filter previously displayed advertisements, so that only advertisements corresponding to one or more user selected attributes are eligible for display”.

In contrast the Examiner has determined that claim 1 is anticipated by LeMole because the reference discloses a window displaying Internet content composed of a plurality of advertisements (Ans. 5). The Examiner has also determined that LeMole discloses the user filtering the advertisements (Br. 6).

We agree with the Appellants that claim 1 is not anticipated by LeMole. LeMole does not disclose an advertising history window displaying Internet content composed of plural advertisements (FF1). LeMole in no way discloses a particular “window” displaying Internet content composed of plural advertisements (FF1). LeMole also does not disclose that the user filters *previously* displayed advertisements (FF2). While LeMole discloses that the user may electronically check his interests for advertisements (Col. 4:42-47) this is only for future advertisements, not *previously* displayed advertisements as required in claim 1. As the cited reference fails to disclose these recited limitations the rejection of claim 1 under 35 U.S.C. § 102(b) as being anticipated by LeMole is not sustained.

Claims 2-6 depend from claim 1 and the rejection of these claims is not sustained for the same reasons.

The Appellant argues that the comments for claim 1, all other things being equal, apply as well to independent claim 14<sup>2</sup> (Br. 7). Claim 14 contains a limitation for “an advertising history window displaying Internet content composed of only of advertisements” which is similar to the limitation in claim 1. As the cited reference fails to disclose this limitation (FF1) the rejection of claim 14 under 35 U.S.C. § 102(b) as being anticipated by LeMole is also not sustained. Claims 15-19 depend from claim 14 and the rejection of these claims is accordingly not sustained for the same reasons above.

The Appellants argue that the rejection of claim 7 under 35 U.S.C. § 102(b) as being anticipated by LeMole is improper because the reference fails to teach the limitation that “the server transmits the Internet advertisements to the user[s] computer while the user is engaged in activity other than requesting the advertisements”<sup>3</sup>. The Appellants also argue that claim 7 should be interpreted in means-plus-function format under 35 § U.S.C. 112, sixth paragraph (Br. 7-8).

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<sup>2</sup> We note that the Appeal Brief at paragraph 6 refers to the remaining “independent claim 13”. As claim 13 is a dependent claim, this is interpreted to be a typographical error meant to refer to the sole remaining independent claim 14.

<sup>3</sup> We note that this is the only argument for claim 7 specifically made by the Appellants. Only those arguments presented in the Appeal Brief are considered. Appellants waive all other arguments in the appeal. See 37 C.F.R. § 41.37(o) (2).

In contrast the Examiner has determined that LeMole discloses this limitation because the advertising pages are pushed to the user's computer for later retrieval by the user (Ans. 7-8).

We agree with the Examiner. LeMole does disclose that the system pushes the information over the Internet to the user where it is cached for later retrieval (FF3). As LeMole's system pushes and transmits the advertisements to the user computer over the Internet, the user may be conventionally engaged in activity other than requesting the advertisements (FF4) when using the computer. LeMole discloses the server transmits the Internet advertisements to the user's computer while the user is engaged in activity other than requesting the advertisements whether or not that portion of the claim is accorded patentable weight under 35 U.S.C. 112, sixth paragraph. As the LeMole reference discloses the limitation argued by the Appellants, the rejection of claim 7 under 35 U.S.C. § 102(b) as being anticipated by LeMole is sustained. The Appellants have not separately argued for dependent claims 8-11 and the rejection of these claims is accordingly sustained for the same reasons.

#### CONCLUSIONS OF LAW

We conclude that Appellants have shown that the Examiner erred in rejecting claims 1-4, 6, and 13-19 under 35 U.S.C. § 102(b) as being anticipated by LeMole.

We conclude that Appellants have failed to show that the Examiner erred in rejecting claims 7-11 under 35 U.S.C. § 102(b) as being anticipated by LeMole.



DECISION

The Examiner's rejection of claims 1-4, 6, and 13-19 is not sustained.  
The Examiner's rejection of claims 7-11 is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a) (1) (iv) (2007).

AFFIRMED-IN-PART

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